

**Executive Summary – Enforcement Matter – Case No. 41396**  
**City Public Service**  
**RN100217975**  
**Docket No. 2011-0484-AIR-E**

**Order Type:**

1660 Agreed Order

**Findings Order Justification:**

N/A

**Media:**

AIR

**Small Business:**

No

**Location(s) Where Violation(s) Occurred:**

Calaveras Plant Site, 12940 Highway 181 South, San Antonio, Bexar County

**Type of Operation:**

Electric power generation plant

**Other Significant Matters:**

Additional Pending Enforcement Actions: No

Past-Due Penalties: No

Other: N/A

Interested Third-Parties: None

**Texas Register Publication Date:** March 2, 2012

**Comments Received:** No

***Penalty Information***

**Total Penalty Assessed:** \$24,000

**Amount Deferred for Expedited Settlement:** \$4,800

**Amount Deferred for Financial Inability to Pay:** \$0

**Total Paid to General Revenue:** \$0

**Total Due to General Revenue:** \$0

Payment Plan: N/A

**SEP Conditional Offset:** \$19,200

Name of SEP: Texas Association of Resource Conservation and Development Areas,

Inc. - Clean School Buses

**Compliance History Classifications:**

Person/CN - Average

Site/RN - High

**Major Source:** Yes

**Statutory Limit Adjustment:** N/A

**Applicable Penalty Policy:** September 2002

**Executive Summary – Enforcement Matter – Case No. 41396**

**City Public Service**

**RN100217975**

**Docket No. 2011-0484-AIR-E**

***Investigation Information***

**Complaint Date(s):** N/A

**Complaint Information:** N/A

**Date(s) of Investigation:** August 26, 2010

**Date(s) of NOE(s):** March 21, 2011

***Violation Information***

Failed to maintain the sulfur dioxide ("SO<sub>2</sub>") emissions rate below the Plantwide Applicability Limit ("PAL") of 27,248 tons on a rolling 12-month basis. Specifically, operation records demonstrated that there was an exceedance of the PAL by 804 tons of SO<sub>2</sub> during the November 1, 2007 through October 31, 2008 rolling 12-month period [30 TEX. ADMIN. CODE § 116.115(c), TEX. HEALTH & SAFETY CODE § 382.085(b), and Permit No. PAL-11, Special Conditions No. 4].

***Corrective Actions/Technical Requirements***

**Corrective Action(s) Completed:**

By November 7, 2008, the Respondent shutdown the J.T. Deely Unit 2 and reduced the operating load capacity of the J.T. Deely Unit 1 to 50% in order to demonstrate compliance with the SO<sub>2</sub> PAL.

**Technical Requirements:**

The Order will require the Respondent to implement and complete a Supplemental Environmental Project ("SEP"). (See SEP Attachment A)

***Litigation Information***

**Date Petition(s) Filed:** N/A

**Date Answer(s) Filed:** N/A

**SOAH Referral Date:** N/A

**Hearing Date(s):** N/A

**Settlement Date:** N/A

***Contact Information***

**TCEQ Attorney:** N/A

**TCEQ Enforcement Coordinator:** Miriam Hall, Enforcement Division, Enforcement Team 4, MC 149, (512) 239-1044; Debra Barber, Enforcement Division, MC 219, (512) 239-0412

**TCEQ SEP Coordinator:** Stuart Beckley, SEP Coordinator, Enforcement Division, MC 219, (512) 239-3565

**Respondent:** Michael Kotara, Senior Vice President, City Public Service, P.O. Box 1771, San Antonio, Texas 78296-1771

**Respondent's Attorney:** N/A

**Attachment A**  
**Docket Number: 2011-0484-AIR-E**

**SUPPLEMENTAL ENVIRONMENTAL PROJECT**

<b>Respondent:</b>	<b>City Public Service</b>
<b>Payable Penalty Amount:</b>	<b>Nineteen Thousand Two Hundred Dollars (\$19,200)</b>
<b>SEP Amount:</b>	<b>Nineteen Thousand Two Hundred Dollars (\$19,200)</b>
<b>Type of SEP:</b>	<b>Pre-approved</b>
<b>Third-Party Recipient:</b>	<b>Texas Association of Resource Conservation and Development Areas, Inc. ("RC&amp;D") - Clean School Buses</b>
<b>Location of SEP:</b>	<b>Texas Air Quality Control Region 217 – San Antonio</b>

The Texas Commission on Environmental Quality ("TCEQ") agrees to offset a portion of the administrative penalty amount assessed in this Agreed Order for the Respondent to contribute to a Supplemental Environmental Project ("SEP"). The offset is equal to the SEP amount set forth above and is conditioned upon completion of the project in accordance with the terms of this Attachment A.

**1. Project Description**

**A. Project**

The Respondent shall contribute to the Third-Party Recipient pursuant to the agreement between the Third-Party Recipient and the TCEQ. Specifically, the contribution will be used to aid local school districts, area transit agencies, and local governments in need of funding assistance to pay for the cost of the following activities to reduce emissions: 1) replacing older diesel buses with alternative fueled or clean diesel buses; or 2) retrofitting older diesel buses with new, cleaner technology. The funds will be disbursed on a needs-rated basis, using non-attainment area status, condition of buses, and economic status of the recipient as possible rating factors if competition for the funds exists. To maximize funds, retrofitting will take priority over replacement of buses. Older buses deemed not suitable for retrofitting will be permanently retired and sold only for scrap.

Acceptable retrofit technologies include particulate matter traps, diesel particulate matter filters, nitrogen oxides (NO<sub>x</sub>) reduction catalyst technology in combination with diesel particulate filters, and other emission control technologies that are developed and approved by the United States Environmental Protection Agency ("EPA") or the California Air

Resources Board.

The Respondent certifies that there is no prior commitment to do this project and that it is being performed solely in an effort to settle this enforcement action.

**B. Environmental Benefit**

This SEP will provide a discernible environmental benefit by reducing particulate matter and hydrocarbon emissions from buses, to meet the new, more stringent emissions standards introduced by the EPA which will be phased in between 2007 and 2010.

**C. Minimum Expenditure**

The Respondent shall contribute at least the SEP amount to the Third-Party Recipient and comply with all other provisions of this SEP.

**2. Performance Schedule**

Within 30 days after the effective date of this Agreed Order, the Respondent must contribute the SEP amount to the Third-Party Recipient. The Respondent shall mail the contribution, with a copy of the Agreed Order, to:

Ken Awtrey, Executive Director  
Jo Nell Haltom, Program Assistant  
Pineywoods RC&D, Sabine-Neches RC&D, and Texas Association of RC&D  
Attention: SEP  
202 East Pilar, Room 304  
Nacogdoches, Texas 75961

**3. Records and Reporting**

Concurrent with the payment of the SEP amount, the Respondent shall provide the Enforcement Division SEP Coordinator with a copy of the check and transmittal letter indicating full payment of the SEP amount to the Third-Party Recipient. The Respondent shall mail a copy of the check and transmittal letter to:

Enforcement Division  
Attention: SEP Coordinator, MC 219  
Texas Commission on Environmental Quality  
P.O. Box 13087  
Austin, Texas 78711-3087

#### **4. Failure to Fully Perform**

If the Respondent does not perform its obligations under this SEP in any way, including full payment of the SEP amount and submittal of the required reporting described in Section 3 above, the Executive Director may require immediate payment of all or part of the SEP amount.

The check for any amount due shall be made out to "Texas Commission on Environmental Quality" and mailed to:

Texas Commission on Environmental Quality  
Financial Administration Division, Revenues  
Attention: Cashier, MC 214  
P.O. Box 13088  
Austin, Texas 78711-3088

The Respondent shall also mail a copy of the check to the Enforcement Division SEP Coordinator at the address in Section 3 above.

#### **5. Publicity**

Any public statements concerning this SEP made by or on behalf of the Respondent must include a clear statement that the project was performed as part of the settlement of an enforcement action brought by the TCEQ. Such statements include advertising, public relations, and press releases.

#### **6. Clean Texas Program**

The Respondent shall not include this SEP in any application made to TCEQ under the "Clean Texas" (or any successor) program(s). Similarly, the Respondent may not seek recognition for this contribution in any other state or federal regulatory program.

#### **7. Other SEPs by TCEQ or Other Agencies**

The SEP identified in this Agreed Order has not been, and shall not be, included as an SEP for the Respondent under any other Agreed Order negotiated with the TCEQ or any other agency of the state or federal government.





# Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

<b>DATES</b>	<b>Assigned</b>	21-Mar-2011	<b>Screening</b>	28-Mar-2011	<b>EPA Due</b>	11-Dec-2011
	<b>PCW</b>	10-Oct-2011				

<b>RESPONDENT/FACILITY INFORMATION</b>	
<b>Respondent</b>	City Public Service
<b>Reg. Ent. Ref. No.</b>	RN100217975
<b>Facility/Site Region</b>	13-San Antonio
<b>Major/Minor Source</b>	Major

<b>CASE INFORMATION</b>				
<b>Enf./Case ID No.</b>	41396	<b>No. of Violations</b>	1	
<b>Docket No.</b>	2011-0484-AIR-E	<b>Order Type</b>	1660	
<b>Media Program(s)</b>	Air	<b>Government/Non-Profit</b>	Yes	
<b>Multi-Media</b>		<b>Enf. Coordinator</b>	Todd Huddleson	
		<b>EC's Team</b>	Enforcement Team 4	
<b>Admin. Penalty \$ Limit Minimum</b>		\$0	<b>Maximum</b>	\$10,000

## Penalty Calculation Section

<b>TOTAL BASE PENALTY (Sum of violation base penalties)</b>	<b>Subtotal 1</b>	\$30,000
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### ADJUSTMENTS (+/-) TO SUBTOTAL 1

Subtotals 2-7 are obtained by multiplying the Total Base Penalty (Subtotal 1) by the indicated percentage.

<b>Compliance History</b>	5.0% Enhancement	<b>Subtotals 2, 3, &amp; 7</b>	\$1,500
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**Notes** Enhancement for one NOV for same/similar violations.

<b>Culpability</b>	No	0.0% Enhancement	<b>Subtotal 4</b>	\$0
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**Notes** The Respondent does not meet the culpability criteria.

<b>Good Faith Effort to Comply Total Adjustments</b>	<b>Subtotal 5</b>	\$7,500
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<b>Economic Benefit</b>	0.0% Enhancement*	<b>Subtotal 6</b>	\$0
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Total EB Amounts \$3  
Approx. Cost of Compliance \$500

\*Capped at the Total EB \$ Amount

<b>SUM OF SUBTOTALS 1-7</b>	<b>Final Subtotal</b>	\$24,000
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<b>OTHER FACTORS AS JUSTICE MAY REQUIRE</b>	0.0%	<b>Adjustment</b>	\$0
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Reduces or enhances the Final Subtotal by the indicated percentage.

**Notes**

<b>Final Penalty Amount</b>	\$24,000
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<b>STATUTORY LIMIT ADJUSTMENT</b>	<b>Final Assessed Penalty</b>	\$24,000
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<b>DEFERRAL</b>	20.0% Reduction	<b>Adjustment</b>	-\$4,800
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Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)

**Notes**

Deferral offered for expedited settlement.

<b>PAYABLE PENALTY</b>	\$19,200
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Screening Date 28-Mar-2011

Docket No. 2011-0484-AIR-E

PCW

Respondent City Public Service

Policy Revision 2 (September 2002)

Case ID No. 41396

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN100217975

Media [Statute] Air

Enf. Coordinator Todd Huddleson

## Compliance History Worksheet

## &gt;&gt; Compliance History Site Enhancement (Subtotal 2)

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written NOVs with same or similar violations as those in the current enforcement action (number of NOVs meeting criteria)	1	5%
	Other written NOVs	0	0%
Orders	Any agreed final enforcement orders containing a denial of liability (number of orders meeting criteria)	0	0%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government (number of judgments or consent decrees meeting criteria)	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government (number of counts)	0	0%
Emissions	Chronic excessive emissions events (number of events)	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which notices were submitted)	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which violations were disclosed)	0	0%
Please Enter Yes or No			
Other	Environmental management systems in place for one year or more	No	0%
	Voluntary on-site compliance assessments conducted by the executive director under a special assistance program	No	0%
	Participation in a voluntary pollution reduction program	No	0%
	Early compliance with, or offer of a product that meets future state or federal government environmental requirements	No	0%

Adjustment Percentage (Subtotal 2) 5%

## &gt;&gt; Repeat Violator (Subtotal 3)

No

Adjustment Percentage (Subtotal 3) 0%

## &gt;&gt; Compliance History Person Classification (Subtotal 7)

Average Performer

Adjustment Percentage (Subtotal 7) 0%

## &gt;&gt; Compliance History Summary

Compliance  
History  
Notes

Enhancement for one NOV for same/similar violations.

Total Adjustment Percentage (Subtotals 2, 3, &amp; 7) 5%

<b>Screening Date</b> 28-Mar-2011 <b>Respondent</b> City Public Service <b>Case ID No.</b> 41396 <b>Reg. Ent. Reference No.</b> RN100217975 <b>Media [Statute]</b> Air <b>Enf. Coordinator</b> Todd Huddleson <b>Violation Number</b> 1	<b>Docket No.</b> 2011-0484-AIR-E <div style="text-align: right;"><b>PCW</b></div> <div style="text-align: right; font-size: small;">         Policy Revision 2 (September 2002)          PCW Revision October 30, 2008       </div>
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<b>Rule Cite(s)</b>	30 Tex. Admin. Code § 116.115(c) and Tex. Health & Safety Code § 382.085(b) and Plantwide Applicability Limit ("PAL") Permit No. PAL-11, Special Conditions No. 4
<b>Violation Description</b>	Failed to maintain the sulfur dioxide ("SO <sub>2</sub> ") emissions rate below the PAL of 27,248 tons on a rolling 12-month basis. Specifically, operation records demonstrated that there was an exceedance of the PAL by 804 tons of SO <sub>2</sub> during the November 1, 2007 through October 31, 2008 rolling 12-month period.

<b>Base Penalty</b>	\$10,000
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**>> Environmental, Property and Human Health Matrix**

OR	<b>Release</b>	<b>Harm</b>			<b>Percent</b>
		Major	Moderate	Minor	
	Actual	<input type="text"/>	<input type="text"/>	<input type="text"/>	
	Potential	<input type="text"/>	<input type="text"/>	<input type="text"/>	0%

**>> Programmatic Matrix**

<b>Falsification</b>	Major	Moderate	Minor	<b>Percent</b>
<input type="text"/>	X	<input type="text"/>	<input type="text"/>	
25%				

<b>Matrix Notes</b>	100% of the rule requirement was not met.
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<b>Adjustment</b>	\$7,500
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<b>Adjustment</b>	\$2,500
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**Violation Events**

Number of Violation Events	12	365	Number of violation days
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mark only one with an x	daily	<input type="text"/>	<b>Violation Base Penalty</b>
	weekly	<input type="text"/>	
	monthly	X	
	quarterly	<input type="text"/>	
	semiannual	<input type="text"/>	
	annual	<input type="text"/>	
	single event	<input type="text"/>	
	Twelve monthly events are recommended from November 1, 2007 through October 31, 2008, during which the SO <sub>2</sub> emission rate was exceeded.		

**Good Faith Efforts to Comply**

	25.0%	Reduction	\$7,500
	Before NOV	NOV to EDRP/Settlement	
Extraordinary	<input type="text"/>	<input type="text"/>	
Ordinary	X	<input type="text"/>	
N/A	<input type="text"/>	(mark with x)	
Notes	The Respondent returned to compliance on November 7, 2008 and the NOE is dated March 21, 2011.		

<b>Violation Subtotal</b>	\$22,500
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**Economic Benefit (EB) for this violation**

<b>Estimated EB Amount</b>	\$3
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**Statutory Limit Test**

<b>Violation Final Penalty Total</b>	\$24,000
<b>This violation Final Assessed Penalty (adjusted for limits)</b>	
\$24,000	

## Economic Benefit Worksheet

**Respondent** City Public Service  
**Case ID No.** 41396  
**Req. Ent. Reference No.** RN100217975  
**Media** Air  
**Violation No.** 1

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
No commas or \$							

### Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)	\$500	1-Oct-2008	7-Nov-2008	0.10	\$3	n/a	\$3

Notes for DELAYED costs

Estimated cost to implement measures and procedures in order to demonstrate compliance with the SO<sub>2</sub> Plantwide Applicability Limit. The Date Required is the first date of non-compliance. The Final Date is the date corrective actions were completed.

### Avoided Costs

ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)

Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/equipment				0.00	\$0	\$0	\$0
Financial Assurance [2]				0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance

\$500

TOTAL

\$3

## Compliance History

Customer/Respondent/Owner-Operator:	CN600129019	City Public Service	Classification: AVERAGE	Rating: 2.47
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Regulated Entity:	RN100217975	CALAVERAS PLANT SITE	Classification: HIGH	Site Rating: 0.04
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ID Number(s):	AIR OPERATING PERMITS	ACCOUNT NUMBER	BG0057U
	AIR OPERATING PERMITS	PERMIT	8
	WASTEWATER	PERMIT	WQ0001514000
	WASTEWATER	EPA ID	TX0063681
	PETROLEUM STORAGE TANK	REGISTRATION	39158
	REGISTRATION		
	AIR NEW SOURCE PERMITS	PERMIT	1491
	AIR NEW SOURCE PERMITS	PERMIT	1492
	AIR NEW SOURCE PERMITS	PERMIT	1652
	AIR NEW SOURCE PERMITS	PERMIT	18426
	AIR NEW SOURCE PERMITS	PERMIT	45640
	AIR NEW SOURCE PERMITS	ACCOUNT NUMBER	BG0057U
	AIR NEW SOURCE PERMITS	AFS NUM	4802900063
	AIR NEW SOURCE PERMITS	PERMIT	70492
	AIR NEW SOURCE PERMITS	REGISTRATION	73935
	AIR NEW SOURCE PERMITS	REGISTRATION	73932
	AIR NEW SOURCE PERMITS	REGISTRATION	52617
	AIR NEW SOURCE PERMITS	EPA ID	PSDTX1037
	AIR NEW SOURCE PERMITS	EPA ID	PSDTX742M1
	AIR NEW SOURCE PERMITS	REGISTRATION	51186
	AIR NEW SOURCE PERMITS	REGISTRATION	52616
	AIR NEW SOURCE PERMITS	EPA ID	PAL11
	AIR NEW SOURCE PERMITS	REGISTRATION	90267
	INDUSTRIAL AND HAZARDOUS WASTE	EPA ID	TXD000815019
	INDUSTRIAL AND HAZARDOUS WASTE	SOLID WASTE REGISTRATION # (SWR)	31445
	IHW CORRECTIVE ACTION	SOLID WASTE REGISTRATION # (SWR)	31445
	POLLUTION PREVENTION PLANNING	ID NUMBER	P01739
	AIR EMISSIONS INVENTORY	ACCOUNT NUMBER	BG0057U

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Location:	12940 HWY 181 S, SAN ANTONIO, TX, 78223
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TCEQ Region:	REGION 13 - SAN ANTONIO
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Date Compliance History Prepared:	March 23, 2011
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Agency Decision Requiring Compliance History:	Enforcement
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Compliance Period:	March 22, 2006 to March 22, 2011
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TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History

Name: Todd Huddleson Phone: (512) 239 - 2541

### Site Compliance History Components

1. Has the site been in existence and/or operation for the full five year compliance period? Yes
2. Has there been a (known) change in ownership/operator of the site during the compliance period? No
3. If Yes, who is the current owner/operator? N/A
4. If Yes, who was/were the prior owner(s)/operator(s)? N/A
5. When did the change(s) in owner or operator occur? N/A
6. Rating Date: 9/1/2010 Repeat Violator: NO

### Components (Multimedia) for the Site :

- A. Final Enforcement Orders, court judgments, and consent decrees of the State of Texas and the federal government.  
N/A
- B. Any criminal convictions of the state of Texas and the federal government.

N/A

C. Chronic excessive emissions events.

N/A

D. The approval dates of investigations. (CCEDS Inv. Track. No.)

1	05/02/2006	(462672)
2	05/19/2006	(466331)
3	05/22/2006	(467136)
4	07/10/2006	(486000)
5	09/22/2006	(490392)
6	09/15/2006	(509306)
7	11/10/2006	(512158)
8	09/22/2006	(512597)
9	09/22/2006	(512836)
10	11/17/2006	(513168)
11	03/01/2007	(515796)
12	11/17/2006	(517809)
13	11/29/2006	(519451)
14	03/01/2007	(535158)
15	01/30/2007	(535640)
16	05/14/2007	(559222)
17	06/19/2007	(563917)
18	09/12/2007	(574138)
19	10/29/2007	(598699)
20	11/21/2007	(598852)
21	11/08/2007	(600693)
22	12/03/2007	(609962)
23	12/12/2007	(611580)
24	01/24/2008	(615713)
25	03/06/2008	(619135)
26	03/06/2008	(636356)
27	03/06/2008	(636358)
28	06/16/2008	(682274)
29	09/12/2008	(700434)
30	09/12/2008	(702440)
31	09/18/2008	(702901)
32	09/30/2008	(703290)
33	09/30/2008	(703482)
34	09/30/2008	(703545)
35	01/06/2009	(722394)
36	02/26/2009	(735638)
37	03/18/2009	(738350)
38	03/26/2009	(739635)
39	04/07/2009	(740906)
40	04/07/2009	(741698)
41	05/18/2009	(745500)
42	05/18/2009	(745622)
43	05/18/2009	(745743)
44	09/07/2009	(762311)

45	07/30/2009	(763928)
46	08/11/2009	(764582)
47	09/11/2009	(766429)
48	10/23/2009	(779791)
49	12/16/2009	(785526)
50	01/13/2010	(788185)
51	02/12/2010	(791559)
52	02/24/2010	(793079)
53	05/24/2010	(801391)
54	05/27/2010	(824471)
55	06/17/2010	(825513)
56	07/09/2010	(829391)
57	03/16/2011	(850604)
58	10/16/2010	(870441)
59	10/16/2010	(870557)
60	10/16/2010	(870601)
61	11/27/2010	(877694)
62	11/27/2010	(877897)
63	12/07/2010	(878658)
64	11/27/2010	(878936)
65	12/22/2010	(880651)
66	01/22/2011	(880966)
67	01/04/2011	(886075)
68	01/04/2011	(886111)

E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)

Date:	05/02/2006	(462672)	CN600129019
Self Report?	NO		Classification: Moderate
Citation:	30 TAC Chapter 116, SubChapter B 116.115(c)		
Description:	Region-documented violation of an opacity event (Incident No. 72210) that exceeded the reportable quantity (more than 15 % above the permit limit) for J. T. Deely Unit 2. The incident was the direct result of operator error.		

F. Environmental audits.

G. Type of environmental management systems (EMSs).

N/A

H. Voluntary on-site compliance assessment dates.

N/A

I. Participation in a voluntary pollution reduction program.

N/A

J. Early compliance.

N/A

Sites Outside of Texas

N/A



# TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



**IN THE MATTER OF AN  
ENFORCEMENT ACTION  
CONCERNING  
CITY PUBLIC SERVICE  
RN100217975**

**§        BEFORE THE  
§  
§        TEXAS COMMISSION ON  
§  
§        ENVIRONMENTAL QUALITY**

## **AGREED ORDER DOCKET NO. 2011-0484-AIR-E**

### **I. JURISDICTION AND STIPULATIONS**

At its \_\_\_\_\_ agenda, the Texas Commission on Environmental Quality ("the Commission" or "TCEQ") considered this agreement of the parties, resolving an enforcement action regarding City Public Service ("the Respondent") under the authority of TEX. HEALTH & SAFETY CODE ch. 382 and TEX. WATER CODE ch. 7. The Executive Director of the TCEQ, through the Enforcement Division, and the Respondent appear before the Commission and together stipulate that:

1. The Respondent owns and operates an electric power generation plant at 12940 Highway 181 South, in San Antonio, Bexar County, Texas (the "Plant").
2. The Plant consists of one or more sources as defined in TEX. HEALTH & SAFETY CODE § 382.003(12).
3. The Commission and the Respondent agree that the Commission has jurisdiction to enter this Agreed Order, and that the Respondent is subject to the Commission's jurisdiction.
4. The Respondent received notice of the violations alleged in Section II ("Allegations") on or about March 26, 2011.
5. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by the Respondent of any violation alleged in Section II ("Allegations"), nor of any statute or rule.
6. An administrative penalty in the amount of Twenty-Four Thousand Dollars (\$24,000) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). Four Thousand Eight Hundred Dollars (\$4,800) is deferred contingent upon the Respondent's timely and satisfactory compliance with all the terms

of this Agreed Order. The deferred amount will be waived upon full compliance with the terms of this Agreed Order. If the Respondent fails to timely and satisfactorily comply with all requirements of this Agreed Order, the Executive Director may require the Respondent to pay all or part of the deferred penalty. Nineteen Thousand Two Hundred Dollars (\$19,200) shall be conditionally offset by the Respondent's completion of a Supplemental Environmental Project ("SEP").

7. Any notice and procedures, which might otherwise be authorized or required in this action, are waived in the interest of a more timely resolution of the matter.
8. The Executive Director of the TCEQ and the Respondent have agreed on a settlement of the matters alleged in this enforcement action, subject to the approval of the Commission.
9. The Executive Director recognizes that, by November 7, 2008, the Respondent shutdown the J.T. Deely Unit 2 and reduced the operating load capacity of the J.T. Deely Unit 1 to 50% in order to demonstrate compliance with the sulfur dioxide ("SO<sub>2</sub>") Plantwide Applicability Limit ("PAL").
10. The Executive Director may, without further notice or hearing, refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings if the Executive Director determines that the Respondent has not complied with one or more of the terms or conditions in this Agreed Order.
11. This Agreed Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Agreed Order, whichever is later.
12. The provisions of this Agreed Order are deemed severable and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Agreed Order unenforceable, the remaining provisions shall be valid and enforceable.

## **II. ALLEGATIONS**

As owner and operator of the Plant, the Respondent is alleged to have failed to maintain the SO<sub>2</sub> emissions rate below the PAL of 27,248 tons on a rolling 12-month basis, in violation of 30 TEX. ADMIN. CODE § 116.115(c), TEX. HEALTH & SAFETY CODE § 382.085(b), and Permit No. PAL-11, Special Conditions No. 4, as documented during a record review conducted on August 26, 2011. Specifically, operation records demonstrated that there was an exceedance of the PAL by 804 tons of SO<sub>2</sub> during the November 1, 2007 through October 31, 2008 rolling 12-month period.

## **III. DENIALS**

The Respondent generally denies each allegation in Section II ("Allegations").

#### IV. ORDERING PROVISIONS

1. It is, therefore, ordered by the TCEQ that the Respondent pay an administrative penalty as set forth in Section I, Paragraph 6 above. The payment of this administrative penalty and the Respondent's compliance with all the terms and conditions set forth in this Agreed Order resolve only the allegations in Section II. The Commission shall not be constrained in any manner from requiring corrective action or penalties for violations which are not raised here. Administrative penalty payments shall be made payable to "TCEQ" and shall be sent with the notation "Re: City Public Service, Docket No. 2011-0484-AIR-E" to:  
  
Financial Administration Division, Revenues Section  
Attention: Cashier's Office, MC 214  
Texas Commission on Environmental Quality  
P.O. Box 13088  
Austin, Texas 78711-3088
2. The Respondent shall implement and complete a SEP in accordance with TEX. WATER CODE § 7.067. As set forth in Section I, Paragraph 6 above, Nineteen Thousand Two Hundred Dollars (\$19,200) of the assessed administrative penalty shall be offset with the condition that the Respondent implement the SEP defined in Attachment A, incorporated herein by reference. The Respondent's obligation to pay the conditionally offset portion of the administrative penalty assessed shall be discharged upon final completion of all provisions of the SEP agreement.
3. The provisions of this Agreed Order shall apply to and be binding upon the Respondent. The Respondent is ordered to give notice of the Agreed Order to personnel who maintain day-to-day control over the Plant operations referenced in this Agreed Order.
4. If the Respondent fails to comply with any of the Ordering Provisions in this Agreed Order within the prescribed schedules, and that failure is caused solely by an act of God, war, strike, riot, or other catastrophe, the Respondent's failure to comply is not a violation of this Agreed Order. The Respondent shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. The Respondent shall notify the Executive Director within seven days after the Respondent becomes aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.
5. The Executive Director may grant an extension of any deadline in this Agreed Order or in any plan, report, or other document submitted pursuant to this Agreed Order, upon a written and substantiated showing of good cause. All requests for extensions by the Respondent shall be made in writing to the Executive Director. Extensions are not effective until the Respondent receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.
6. This Agreed Order, issued by the Commission, shall not be admissible against the Respondent in a civil proceeding, unless the proceeding is brought by the OAG to: (1) enforce the terms of this Agreed Order; or (2) pursue violations of a statute within the

Commission's jurisdiction, or of a rule adopted or an order or permit issued by the Commission under such a statute.

7. This Agreed Order may be executed in separate and multiple counterparts, which together shall constitute a single instrument. Any page of this Agreed Order may be copied, scanned, digitized, converted to electronic portable document format ("pdf"), or otherwise reproduced and may be transmitted by digital or electronic transmission, including but not limited to facsimile transmission and electronic mail. Any signature affixed to this Agreed Order shall constitute an original signature for all purposes and may be used, filed, substituted, or issued for any purpose for which an original signature could be used. The term "signature" shall include manual signatures and true and accurate reproductions of manual signatures created, executed, endorsed, adopted, or authorized by the person or persons to whom the signatures are attributable. Signatures may be copied or reproduced digitally, electronically, by photocopying, engraving, imprinting, lithographing, electronic mail, facsimile transmission, stamping, or any other means or process which the Executive Director deems acceptable. In this paragraph exclusively, the terms "electronic transmission", "owner", "person", "writing", and "written" shall have the meanings assigned to them under TEX. BUS. ORG. CODE § 1.002.
8. Under 30 TEX. ADMIN. CODE § 70.10(b), the effective date is the date of hand-delivery of the Order to the Respondent, or three days after the date on which the Commission mails notice of the Order to the Respondent, whichever is earlier. The Chief Clerk shall provide a copy of this Agreed Order to each of the parties.

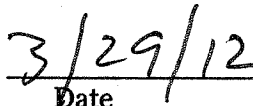
**SIGNATURE PAGE**

**TEXAS COMMISSION ON ENVIRONMENTAL QUALITY**

\_\_\_\_\_  
For the Commission



\_\_\_\_\_  
For the Executive Director



\_\_\_\_\_  
Date

I, the undersigned, have read and understand the attached Agreed Order. I am authorized to agree to the attached Agreed Order on behalf of the entity indicated below my signature, and I do agree to the terms and conditions specified therein. I further acknowledge that the TCEQ, in accepting payment for the penalty amount, is materially relying on such representation.

I also understand that failure to comply with the Ordering Provisions, if any, in this order and/or failure to timely pay the penalty amount, may result in:

- A negative impact on compliance history;
- Greater scrutiny of any permit applications submitted;
- Referral of this case to the Attorney General's Office for contempt, injunctive relief, additional penalties, and/or attorney fees, or to a collection agency;
- Increased penalties in any future enforcement actions;
- Automatic referral to the Attorney General's Office of any future enforcement actions; and
- TCEQ seeking other relief as authorized by law.

In addition, any falsification of any compliance documents may result in criminal prosecution.



\_\_\_\_\_  
Signature



\_\_\_\_\_  
Date

\_\_\_\_\_  
Michael Kotara

\_\_\_\_\_  
Name (Printed or typed)  
Authorized Representative of  
City Public Service

\_\_\_\_\_  
Senior Vice President

\_\_\_\_\_  
Title

**Instructions:** Send the original, signed Agreed Order with penalty payment to the Financial Administration Division, Revenues Section at the address in Section IV, Paragraph 1 of this Agreed Order.



**Attachment A**  
**Docket Number: 2011-0484-AIR-E**

**SUPPLEMENTAL ENVIRONMENTAL PROJECT**

<b>Respondent:</b>	<b>City Public Service</b>
<b>Payable Penalty Amount:</b>	<b>Nineteen Thousand Two Hundred Dollars (\$19,200)</b>
<b>SEP Amount:</b>	<b>Nineteen Thousand Two Hundred Dollars (\$19,200)</b>
<b>Type of SEP:</b>	<b>Pre-approved</b>
<b>Third-Party Recipient:</b>	<b>Texas Association of Resource Conservation and Development Areas, Inc. ("RC&amp;D") - Clean School Buses</b>
<b>Location of SEP:</b>	<b>Texas Air Quality Control Region 217 – San Antonio</b>

The Texas Commission on Environmental Quality ("TCEQ") agrees to offset a portion of the administrative penalty amount assessed in this Agreed Order for the Respondent to contribute to a Supplemental Environmental Project ("SEP"). The offset is equal to the SEP amount set forth above and is conditioned upon completion of the project in accordance with the terms of this Attachment A.

**1. Project Description**

**A. Project**

The Respondent shall contribute to the Third-Party Recipient pursuant to the agreement between the Third-Party Recipient and the TCEQ. Specifically, the contribution will be used to aid local school districts, area transit agencies, and local governments in need of funding assistance to pay for the cost of the following activities to reduce emissions: 1) replacing older diesel buses with alternative fueled or clean diesel buses; or 2) retrofitting older diesel buses with new, cleaner technology. The funds will be disbursed on a needs-rated basis, using non-attainment area status, condition of buses, and economic status of the recipient as possible rating factors if competition for the funds exists. To maximize funds, retrofitting will take priority over replacement of buses. Older buses deemed not suitable for retrofitting will be permanently retired and sold only for scrap.

Acceptable retrofit technologies include particulate matter traps, diesel particulate matter filters, nitrogen oxides (NO<sub>x</sub>) reduction catalyst technology in combination with diesel particulate filters, and other emission control technologies that are developed and approved by the United States Environmental Protection Agency ("EPA") or the California Air

City Public Service  
Agreed Order - Attachment A

Resources Board.

The Respondent certifies that there is no prior commitment to do this project and that it is being performed solely in an effort to settle this enforcement action.

**B. Environmental Benefit**

This SEP will provide a discernible environmental benefit by reducing particulate matter and hydrocarbon emissions from buses, to meet the new, more stringent emissions standards introduced by the EPA which will be phased in between 2007 and 2010.

**C. Minimum Expenditure**

The Respondent shall contribute at least the SEP amount to the Third-Party Recipient and comply with all other provisions of this SEP.

**2. Performance Schedule**

Within 30 days after the effective date of this Agreed Order, the Respondent must contribute the SEP amount to the Third-Party Recipient. The Respondent shall mail the contribution, with a copy of the Agreed Order, to:

Ken Awtrey, Executive Director  
Jo Nell Haltom, Program Assistant  
Pineywoods RC&D, Sabine-Neches RC&D, and Texas Association of RC&D  
Attention: SEP  
202 East Pilar, Room 304  
Nacogdoches, Texas 75961

**3. Records and Reporting**

Concurrent with the payment of the SEP amount, the Respondent shall provide the Enforcement Division SEP Coordinator with a copy of the check and transmittal letter indicating full payment of the SEP amount to the Third-Party Recipient. The Respondent shall mail a copy of the check and transmittal letter to:

Enforcement Division  
Attention: SEP Coordinator, MC 219  
Texas Commission on Environmental Quality  
P.O. Box 13087  
Austin, Texas 78711-3087

#### **4. Failure to Fully Perform**

If the Respondent does not perform its obligations under this SEP in any way, including full payment of the SEP amount and submittal of the required reporting described in Section 3 above, the Executive Director may require immediate payment of all or part of the SEP amount.

The check for any amount due shall be made out to "Texas Commission on Environmental Quality" and mailed to:

Texas Commission on Environmental Quality  
Financial Administration Division, Revenues  
Attention: Cashier, MC 214  
P.O. Box 13088  
Austin, Texas 78711-3088

The Respondent shall also mail a copy of the check to the Enforcement Division SEP Coordinator at the address in Section 3 above.

#### **5. Publicity**

Any public statements concerning this SEP made by or on behalf of the Respondent must include a clear statement that the project was performed as part of the settlement of an enforcement action brought by the TCEQ. Such statements include advertising, public relations, and press releases.

#### **6. Clean Texas Program**

The Respondent shall not include this SEP in any application made to TCEQ under the "Clean Texas" (or any successor) program(s). Similarly, the Respondent may not seek recognition for this contribution in any other state or federal regulatory program.

#### **7. Other SEPs by TCEQ or Other Agencies**

The SEP identified in this Agreed Order has not been, and shall not be, included as an SEP for the Respondent under any other Agreed Order negotiated with the TCEQ or any other agency of the state or federal government.